



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution response to 'Veseli Defence Request for Certification to Appeal First Oral Order of 30 January 2025' (F02909)

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Request¹ should be dismissed as the Issues² identified by the Defence fail to meet the criteria for certification³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵ The matters raised do not constitute appealable issues within the meaning of Rule 77, nor does the Defence show that appellate review of the Order⁶ would have any, let alone significant, impact on the conduct of the proceedings.

2. As repeatedly stated by the Panel, triers of fact enjoy considerable discretion in deciding whether to admit evidence, and consequently certification to appeal admissibility decisions must be the absolute exception.⁷ The Request fails to demonstrate that either of the Issues meets this standard.

II. SUBMISSIONS

A. THE ISSUES ARE NOT APPEALABLE

3. The Request recycles arguments already considered by the Trial Panel, misconstrues the Order and other past findings of the Panel, and ultimately reflects mere disagreement with the Panel's ruling. In this regard, the Issues repeat and substantially overlap with arguments in a previous Defence certification request

¹ Veseli Defence Request for Certification to Appeal First Oral Order of 30 January 2025, KSC-BC-2020-06/F02909, 6 February 2025, Confidential ('Request').

² Request, KSC-BC-2020-06/F02909, para.2, defining the 'First Issue' and the 'Second Issue' (together, 'Issues').

³ The applicable law has been set out in prior decisions. *See e.g.* Decision on the Taçi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021 ('January 2021 Decision'), paras 9-17; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 10-18.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules.

⁶ Transcript, 30 January 2025, pp.24832-24833 ('Order').

⁷ Decision on the Taçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024, KSC-BC-2020-06/F02757, 3 December 2024 ('December 2024 Decision'), para.14; Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960, KSC-BC-2020-06/F02157, 29 February 2024 ('February 2024 Decision'), para.11.

concerning the exclusion of other courts' evidentiary findings,⁸ which the Panel rejected as unfounded.⁹ The Request is also effectively a belated challenge to the Third Rule 155 Decision, which emphasised that the credibility findings in 2D00043 would have no value in, *inter alia*, the Panel's ultimate assessment of the evidence.¹⁰ While the Request could therefore be summarily dismissed, it also fails on its merits.

4. The First Issue, arguing that the Panel's distinction between circumstances of the Order and Decision F01733¹¹ was 'arbitrary', mischaracterises the Panel's findings.¹² As explained by the Panel, while Decision F01733 concerned contextual evidence related to a Prosecution exhibit, the excerpts in 2D00043 are 'clearly not contextual' as they comprise another court's assessment of the credibility of W04839.¹³ This distinction is consistent with the Panel's prior decisions concerning its duty to independently assess the credibility of witness evidence,¹⁴ including that of W04839.¹⁵ Further, in Decision F01733, the Panel ruled that references to witness evidence in the admitted exhibits would be disregarded and form no part of the record,¹⁶ and

⁸ See Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024, KSC-BC-2020-06/F02719, 14 November 2024 ('Thaçi Request'). Compare, in particular, the First Issue with Thaçi Request, KSC-BC-2020-06/F02719, paras 15-16 (arguing that exclusion of other courts' evidentiary findings based on the Panel's exclusive duty to assess witness credibility was unjustified and inconsistent with past jurisprudence); and the Second Issue with Thaçi Request, KSC-BC-2020-06/F02719, para.17 (arguing that denying admission was prejudicial because the Defence was entitled to rely on the other court's observations of W01453 as evidence of credibility). See also December 2024 Decision, KSC-BC-2020-06/F02757, paras 28-33.

⁹ December 2024 Decision, KSC-BC-2020-06/F02757, para.34.

¹⁰ Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023 ('Third Rule 155 Decision'), para.50 (considering, *inter alia*, that 'an assessment of both the requirements of admissibility of evidence and, ultimately, findings regarding weight and probative value must be conducted in each case and in light of (and only in light of) the evidence on the record of the relevant proceedings') (emphasis added).

¹¹ Public Redacted Version of Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony, KSC-BC-2020-06/F01733/RED, 1 November 2023 ('Decision F01733').

¹² Request, KSC-BC-2020-06/F02909, paras 13-21.

¹³ Order, Transcript, 30 January 2025, p.24833.

¹⁴ See Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential ('First Rule 155 Decision'), paras 19, 49; Transcript, 5 September 2023, p.7269; Transcript, 7 November 2024, pp.22153-22154. See also December 2024 Decision, KSC-BC-2020-06/F02757, paras 18, 25, 31.

¹⁵ Third Rule 155 Decision, KSC-BC-2020-06/F02013, para.50.

¹⁶ Decision F01733, KSC-BC-2020-06/F01733, para.11.

underlined the ‘very limited’ probative value of findings made by other courts based on different evidential records.¹⁷ The Defence’s insistence that the Panel should upend its practice of not admitting other courts’ credibility findings, simply because the Defence now characterises the findings in 2D00043 as ‘highly relevant to the Panel’s own assessment’,¹⁸ is unconvincing.¹⁹ The Defence merely disagrees with the outcome of the Order and seeks to challenge the Panel’s approach towards other courts’ findings overall, without presenting any appealable issue.²⁰

5. The Second Issue likewise misrepresents the Panel’s reasoning and does not arise from the Order. The Defence arguments concerning alleged ‘acute’ and ‘compounding’ prejudice caused by its inability to cross-examine W04839 are inapposite as they insinuate error in the Rule 155 admission of W04839’s evidence.²¹ As noted above, the Order is consistent with the Panel’s refusal to consider the findings in 2D00043 in assessing the credibility of W04839.²² Aside from its misguided reliance on Decision F01733,²³ the Defence fails to identify any legal basis suggesting that the Panel should have, again, expounded on W04839’s unavailability or considered it in any way relevant to the admissibility of 2D00043.²⁴ That the Defence is unable to cross-examine W04839 is a matter going to the Panel’s assessment of his evidence, not a reason warranting the admission of another court’s credibility findings

¹⁷ Decision F01733, KSC-BC-2020-06/F01733, para.13.

¹⁸ Request, KSC-BC-2020-06/F02909, paras 18, 20. *See also* Transcript, 29 January 2025, pp.24797-24798.

¹⁹ *See* Transcript, 5 September 2023, p.7269 (specifically noting that other courts’ findings are ‘not relevant or probative to [the Panel’s] fact-finding in this case’).

²⁰ *See e.g.* December 2024 Decision, KSC-BC-2020-06/F02757, para.25.

²¹ Request, KSC-BC-2020-06/F02909, paras 22, 24. *See also* Joint Defence Response to Prosecution Third Motion for Admission of Evidence Pursuant to Rule 155 (F01804), KSC-BC-2020-06/F01865, 17 October 2023, Confidential, paras 30, 32-36, 47 (raising similar arguments now presented under the Second Issue, including by reference to the excerpts in 2D00043).

²² Third Rule 155 Decision, KSC-BC-2020-06/F02013, para.50.

²³ Request, KSC-BC-2020-06/F02909, para.25.

²⁴ *See* February 2024 Decision, KSC-BC-2020-06/F02157, para.11 (noting that ‘the admission of exhibits [...] is primarily regulated by Rules 137 and 138(1), and not by considerations or factors extraneous to these provisions’). *See also* February 2024 Decision, KSC-BC-2020-06/F02157, para.16.

reached on the basis of a different record.²⁵ Moreover, the Panel specifically noted that the relevant parts of 2D00043 have been read into the record.²⁶ As such, the Second Issue is disconnected from the substance of the Order and merely reflects the Defence's dissatisfaction with the Panel's decision. It does not amount to an appealable issue.

B. NEITHER OF THE ISSUES WOULD HAVE A SIGNIFICANT IMPACT ON OR MATERIALLY ADVANCE THE PROCEEDINGS

6. The Request fails to demonstrate that either of the Issues would have any, let alone significant, effect on the fairness and expeditiousness of the proceedings. The relevant parts of 2D00043 have already been captured on the record and are available for the Panel to consider.²⁷ In such circumstances, where the Panel has denied evidence of low, if any, probative value, the Issues cannot be said to meet the exceptional threshold warranted for certification of admissibility decisions.²⁸

7. The Panel's approach to other courts' credibility findings has been consistent and 'predictable'.²⁹ That the Panel has previously exercised its discretion to admit other evidence in materially different circumstances does not affect the reliability of this approach or create any contrary 'precedent'.³⁰ The Defence's general assertion that the Order 'does not promote' and 'significantly impacts' fairness and expeditiousness is undeveloped and lacks the necessary specificity required for certification.³¹

8. For the same reasons, the Request also fails to show any concrete need for an immediate resolution by the Court of Appeals Panel. The Defence's claim that

²⁵ See e.g. Third Rule 155 Decision, KSC-BC-2020-06/F02013, paras 12, 30, 53; First Rule 155 Decision, KSC-BC-2020-06/F01603, paras 18, 50, 125. *Contra* Request, KSC-BC-2020-06/F02909, paras 22-25.

²⁶ Order, Transcript, 30 January 2025, p.24832. See, similarly, December 2024 Decision, KSC-BC-2020-06/F02757, paras 18-20, 25-26.

²⁷ Transcript, 29 January 2025, p.24776-24779. See also Order, Transcript, 30 January 2025, p.24832.

²⁸ December 2024 Decision, KSC-BC-2020-06/F02757, paras 20, 26, 32.

²⁹ *Contra* Request, KSC-BC-2020-06/F02909, paras 27-28.

³⁰ See also Decision on Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765), KSC-BC-2020-06/F02842, 21 January 2025, para.12. *Contra* Request, KSC-BC-2020-06/F02909, para.27.

³¹ Request, KSC-BC-2020-06/F02909, para.27. See Decision on Veseli Defence Request for Certification to Appeal the Decision to Admit P1064 and P1065, KSC-BC-2020-06/F02259, 23 April 2024, para.14.

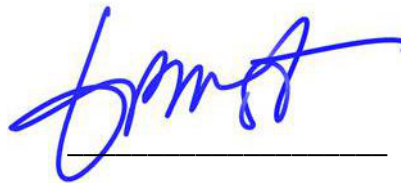
appellate review would result in any 'greater certainty' is vague and hypothetical.³² Likewise, the suggestion that an interlocutory appeal would give the Defence 'confidence that unfair prejudice caused by the admission of Prosecution evidence will be redressed' is speculative, unsubstantiated, and improper insofar as it implies error in past evidentiary rulings beyond the scope of the Order.³³

9. Accordingly, none of the cumulative requirements for certification are met.³⁴

III. RELIEF REQUESTED

10. For the foregoing reasons, the Request fails to meet the leave to appeal standard and should be rejected.

Word Count: 1616



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Wednesday, 19 February 2025

At The Hague, the Netherlands.

³² Request, KSC-BC-2020-06/F02909, para.28.

³³ Request, KSC-BC-2020-06/F02909, para.28.

³⁴ January 2021 Decision, KSC-BC-2020-06/F00172, paras 10-16.